

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

ESI Companies Inc.
1877 Vanderhorn Drive
Memphis, Tennessee 38134

)
)
)
)
)

File Number EB-02-NF-109
NAL/Acct. No. 200332640003
FRN 4245429

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 4, 2003

By the Enforcement Bureau, Norfolk Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find ESI Companies Inc. (“ESI”), apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ Specifically, we find ESI apparently liable for the operation of a radio station on the frequency of 156.8050 MHz without Commission authorization.

II. BACKGROUND

2. On August 14, 2002, the FCC, Enforcement Bureau, Norfolk Office (“Norfolk Office”) received a complaint about transmissions that were hampering the U.S. Coast Guard Auxiliary’s ability to monitor for distress calls from boaters on the marine safety channel at 156.8000 MHz. The complainant said that transmissions emanated from an area south of Taylorsville, North Carolina, on the frequency of 156.8050 MHz. This frequency is in a band of frequencies allocated exclusively for maritime use. The complainant also said that the interfering transmissions were construction related and that the FCC did not license any station in the area for use of 156.8050 MHz. The complainant also sent the Norfolk Office a detailed log of transmissions. That log mentioned the name “Chris Thompson” during transmissions noted on July 24, 2002. FCC license databases had no record of a license issued for the use of 156.8050 MHz near Taylorsville, North Carolina.

3. On August 22, 2002, an agent from the Norfolk Office monitored the frequency 156.8050 MHz in the Taylorsville, North Carolina area. The agent observed communications on that frequency related to construction activities, and also heard the name “Chris” among others. Using direction finding equipment and investigative techniques, he determined that these transmissions emanated from a construction site located off of Old Land Fill Road (SR 1608) south of Taylorsville, North Carolina. The agent conducted an inspection and interviewed ESI’s construction superintendant. The superintendant stated that ESI employees used a base station radio and six hand-held radios as part of its construction business at the site; and that Chris Thompson was an ESI employee. The agent made frequency measurements of the base station and noted that it was tuned to 156.8050 MHz. ESI holds licenses for business radio stations, but it is not authorized to transmit on 156.8050 MHz or any marine frequency.

¹ § 47 U.S.C. § 301.

4. On October 21, 2002, in response to questions from the Norfolk agent, ESI wrote that it used the wrong frequency in Taylorsville, North Carolina and at possible other locations across the country, but that it had corrected the violations.

III. DISCUSSION

5. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On July 24, 2002, and on August 22, 2002, ESI operated radio-transmitting equipment on the frequency of 156.8050 MHz without benefit of the required Commission authorization.

6. Based on the evidence before us, we find ESI willfully² and repeatedly³ violated Section 301 of the Act by operating radio transmission apparatus without a license.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for operating a station without a license is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ In doing so, we note that ESI previously operated a station without a license on the frequency of 156.800 MHz near the East Mesa Detention Facility, San Diego, California. ESI's unlicensed operation occurred on July 2, 1999. On July 14, 1999, the FCC San Diego Office issued ESI a warning about unlicensed station operation. Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ ESI is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Act by operating radio transmission apparatus without a license.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, ESI SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to ESI Companies Inc., 1877 Vanderhorn Drive, Memphis, TN, 38134.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Husnay

⁸ See 47 C.F.R. § 1.1914.

Resident Agent, Norfolk Office, Enforcement Bureau

Attachment

ESI Companies Inc
1877 Vanderhorn Drive
Memphis TN 38134

ESI Companies Inc
1877 Vanderhorn Drive
Memphis TN 38134